

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ERICSSON, INC., ET AL )  
-vs- ) DOCKET NO. 6:10cv473  
Tyler, Texas  
9:00 a.m.  
D-LINK CORPORATION, ET AL ) June 6, 2013

8 TRANSCRIPT OF TRIAL  
MORNING SESSION  
9 BEFORE THE HONORABLE LEONARD DAVIS,  
UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

11    A P P E A R A N C E S

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 All right. Mr. Jones, I understand  
6 there's an issue.

7 MR. JONES: I believe there are two  
8 issues, Your Honor.

9 Mr. Bone -- first thing, we just need  
10 some guidance from the Court. Mr. Bone and I tried to  
11 coordinate our examination, and what I believe we  
12 have -- and you certainly correct me if I'm wrong -- is  
13 when he gets through with the sealed portion, there will  
14 be about 10 minutes for him to wrap up. He asked me  
15 about mine; and as we were coordinating, I said I have  
16 about 5 to 10 minutes to introduce me getting back into  
17 the sealed --

18 THE COURT: Could you speak to the  
19 microphone?

20 MR. JONES: I'm sorry, Your Honor. I  
21 apologize.

22 Then I have about 5 to 10 minutes  
23 introduction before I get into the sealed portion of  
24 those license agreements.

25 THE COURT: Oh, okay.

1                   MR. JONES: Our suggestion, and it's  
2 merely a suggestion, was that you might want to keep it  
3 sealed the entire time so we don't run in and run out.

4                   But we were just wanting to inform the  
5 Court of -- that we had coordinated, and that was kind  
6 of the time that we were going to be looking at.

7                   THE COURT: Okay. Well, I'm not a fan of  
8 sealing the courtroom.

9                   MR. JONES: I understand, Your Honor.

10                  THE COURT: So we're not going to keep it  
11 sealed when it doesn't need to be sealed.

12                  MR. JONES: Okay. Thank you, Your Honor.

13                  THE COURT: That's how we'll deal with  
14 that.

15                  MR. JONES: And -- and one other thing.

16                  Obviously, we are now going into  
17 testimony about the licenses that we have contended are  
18 not comparable as broad general cross-licenses for the  
19 reasons set out in our Motion in Limine and Dauberts --  
20 further reasons besides the fact that they are broad  
21 general cross-licenses.

22                  We are also about to commence testimony  
23 about calculations for royalty rates from these, and  
24 they're based on the price of the products in total and  
25 percentage royalties and caps. And we believe that that

1 is improper for violating the entire market value rule  
2 and testimony about improper apportionment.

3 For those reasons, we are going to object  
4 to that testimony.

5 But instead -- and we already know Your  
6 Honor's ruling -- and in light of your rulings on the  
7 Dauberts and Motions in Limines, but we would ask for a  
8 continuing objection so we don't have to object to all  
9 those questions.

10 THE COURT: Any objection to that?

11 MR. CAMPBELL: No, Your Honor.

12 THE COURT: All right. You may have the  
13 continuing objection.

14 MR. JONES: Thank you, Your Honor.

15 THE COURT: All right. Anything further  
16 before we bring the jury?

17 (No response.)

18 THE COURT: All right. Bring the jury  
19 in.

20 COURT SECURITY OFFICER: All rise.

21 (Jury in.)

22 THE COURT: Please be seated.

23 Good morning, Ladies and Gentleman of the  
24 Jury. Y'all always look so much better in the morning  
25 than you do in the afternoon, and it's understandable.

1 All right. You may -- may proceed,  
2 Counsel.

3 MR. CAMPBELL: Thank you, Your Honor.

4 JOHN BONE, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

5 CROSS-EXAMINATION (CONTINUED)

6 BY MR. CAMPBELL:

7 Q. Mr. Bone, you might just remind the jury where  
8 we're at in terms of what we discussed yesterday and  
9 where we're headed now.

10 A. I believe where we left off is we were just  
11 about to go into the license agreements that Ericsson  
12 has entered into with a number of other companies to  
13 license their technology.

14 Q. Okay.

15 MR. CAMPBELL: And, Your Honor, at this  
16 point, we need to go into the financial terms of those  
17 licenses which have all been designated attorneys' eyes  
18 only.

19 THE COURT: All right. At this time  
20 we'll seal the courtroom. If you're not an attorney or  
21 an expert witness who is subject to the protective order  
22 that's been entered in this case, then you need to leave  
23 the courtroom at this time. We'll let you know when you  
24 can come back in.

25 So please leave the courtroom if you're

1 not covered by the Court's protective order.

2 (Pause.)

3 THE COURT: I'm glad none of you jurors  
4 tried to leave.

5 [Laughter]

6 (Courtroom sealed.)

7 (Sealed Portion No. 4 of the Trial  
8 filed under separate cover.)

9 (Courtroom unsealed.)

10 THE COURT: You may proceed.

11 MR. CAMPBELL: Thank you, Your Honor.

12 Q. (By Mr. Campbell) Okay, Mr. Bone. So let's  
13 talk about one last factor. You talked about it  
14 yesterday -- what a hypothetical negotiation entails and  
15 what a real-world negotiation entails.

16 How does the differences there affect where  
17 you believe the parties would settle within the range of  
18 rates that you calculated?

19 A. So in the real-world negotiations, there was  
20 no assumption of validity infringement, so each of the  
21 companies, Buffalo, RIM, HP, walked into the negotiation  
22 not assuming that they infringed valid patents.

23 In the hypothetical negotiation, as I've said  
24 earlier, they would walk into the room knowing that they  
25 infringed valid patents, and that would have the effect

1 of increasing the rate.

2 An analogy?

3 Q. Yeah. What -- do you have an analogy to  
4 explain that?

5 A. I think a helpful analogy to think of this is  
6 that right now the Defendants have said that they --  
7 they don't infringe the technology. And so if you put  
8 them in a room today, they probably wouldn't agree to,  
9 you know, come up with a rate, or they'd be very -- they  
10 would be willing to pay only a very small amount.

11 But if you put the -- if after the trial and  
12 if -- let's assume that the jury finds that the patents  
13 are valid and infringed; and if you put the Defendants  
14 in a room with Ericsson knowing that they infringe valid  
15 patents, that would change how much they would be  
16 willing to pay. That would increase the amount that  
17 they would be willing to pay for the technology.

18 Q. Okay. So you have these real-world licenses.  
19 You took those into consideration. You made a number of  
20 adjustments for comparability. Considered a number of  
21 other factors.

22 After all that work, did you determine a  
23 reasonable royalty that Ericsson and the Defendants  
24 would agree to?

25 A. I did.



1           So based on that, I concluded that a royalty  
2 rate for the routers would range from 34 cents to 59  
3 cents; and that the royalty rate for the computer  
4 Defendants would range from 25 cents to 88 cents.

5           Q.   And did you determine where within that range  
6 you believe the reasonable royalty would fall?

7           A.   Well, I believe -- anywhere within that range,  
8 I think, is reasonable. I think a reasonable  
9 conclusion, though, is the 50-cent reference rate that  
10 Ericsson has. And I think -- and that's squarely within  
11 the middle of the rates.

12          Q.   Okay. Now, let's just question that for a  
13 minute. The -- the licenses we talked about, we don't  
14 want to go into the financial details, but those were  
15 for an entire portfolio.

16               This case has five patents-in-suit. Does that  
17 make sense that the reference rate of 50 cents for an  
18 entire portfolio and the rate for five patents-in-suit  
19 would be the same?

20          A.   Well, on the face it doesn't sound like it,  
21 but it does when you consider the difference between the  
22 assumptions you have to make in a hypothetical. And  
23 there are a number.

24               For example, as -- as you've said, you'd have  
25 to make some adjustment for the fact that we're only

1 dealing with five patents, as opposed to the whole  
2 portfolio. Now, that would have a downward adjustment  
3 to the rate.

4 But there are several factors that would  
5 increase the rate to go up. For example, they're only  
6 getting the U.S. rights, which are the more valuable  
7 rights. That would tend to increase the rate.  
8 They would not be getting grant-back, so that would have  
9 to increase the rate again.

10 And -- and then the difference between the  
11 hypothetical and the real world, the whole assumption  
12 about walking into the room knowing that they infringe  
13 valid patents, that would tend to increase the rate even  
14 more.

15 So it's my opinion, based on my analysis, that  
16 I think a 50-cent rate under the hypothetical is a  
17 reasonable conclusion for the five patents-in-suit.

18 Q. Okay. Okay. So now that we have a royalty  
19 rate, we need a royalty base; is that right?

20 A. That's correct.

21 Q. Okay. And what did you determine the royalty  
22 base is in this case?

23 A. So based on the records that the Defendants  
24 provided, I determined the actual devices that used  
25 the -- that infringed the technology, and they amount to

1 what you see here in the tables.

2 So, for example, D-Link, over the period of  
3 time, sold 2.9 million routers.

4 Q. Okay. And is this -- is this all the Wi-Fi  
5 products that the Defendants have sold?

6 A. No.

7 Q. Okay. Well, when does this start? When did  
8 you start calculating the royalty base?

9 A. So this calculation only begins when the  
10 Defendants receive notice from Ericsson that they  
11 infringed every single patent in this case. So they  
12 actually were selling products before then, but I've  
13 only included those sales after they were informed that  
14 they infringed the patents.

15 Q. Well, can a company infringe a patent even if  
16 it's not on notice of the patent?

17 A. That's my understanding.

18 Q. Okay. But how many of these -- how many of  
19 these devices in your list here are before the  
20 Defendants had notice?

21 A. None.

22 Q. Okay. Okay. And we don't need to read this  
23 into the record, but we do need to read into the record  
24 the exhibits that this comes from, and this comes from  
25 PX 499 to 502, 508, 510, 541, 553, 554, 557 through 561;

1 is that correct?

2 A. That's correct.

3 Q. Okay. Okay. Now, let's make sure -- you  
4 talked yesterday about a number of factors that you need  
5 to consider in your reasonable royalty analysis. Do you  
6 recall that?

7 A. I do.

8 Q. Okay. Let's make sure we cover all of those  
9 and have considered all of those.

10 Have you considered the royalty rates paid for  
11 the use of the patents by other companies that have  
12 permission to use Ericsson's Wi-Fi patents?

13 A. I have. That's a lot of what we've been  
14 talking about.

15 Q. Okay. What about royalty rates for comparable  
16 patents paid by the infringer, have you considered that?

17 A. Yes, I did. The Defendants produced 400  
18 agreements -- license agreements, and there were license  
19 agreements with a handful of companies that licensed  
20 Wi-Fi technology. And based on my review of those  
21 license agreements, I did not find those to be  
22 comparable.

23 Q. Okay. What about the nature and the scope of  
24 the license, did you consider that factor?

25 A. Yes. So we've talked about that to some

1 extent. This is going to be a non-exclusive license,  
2 and it would only be for world -- excuse me, U.S.  
3 rights.

4 Q. Okay. How about Ericsson's licensing  
5 policies, did you consider that?

6 A. Yep, we talked about that. We talked about  
7 the fact that they have a RAND commitment, and we also  
8 talked about the reference rate.

9 Q. Okay. What about the commercial relationship  
10 between Ericsson and the infringer Defendants?

11 A. Well, we haven't talked about that  
12 specifically, but that's something I considered.  
13 Ericsson and the Defendants do not compete and -- but --  
14 but the -- Ericsson's licensees, the companies that  
15 entered into the license agreements do -- do compete  
16 with the -- with the Defendants.

17 Q. Okay. How about the profitability, success,  
18 and popularity of the products covered by the patents?

19 A. Yes, I have considered that. That -- this  
20 factor is accounted for when you look at the market  
21 rates. The market rates consider this factor.

22 Q. Okay. What about the advantages over prior  
23 devices and benefits of the patented invention?

24 A. Yes. In the same way, the market rates  
25 account for these very factors.

1 Q. Okay. What about the extent of use of the  
2 patents by the infringer?

3 A. So we just talked about that. That would be  
4 the royalty base with the number of infringing units  
5 that the Defendants sold.

6 Q. Okay. And what about the portion of the  
7 profit due to the invention?

8 A. That would also be accounted for in the market  
9 rates.

10 Q. Okay. And what about the duration of the  
11 patents?

12 A. So patents generally have a 20-year life, and  
13 based on the date of filing, they expire between 2016  
14 and 2020.

15 Q. Okay. Okay. So let's wrap it up. You  
16 calculated a reasonable royalty rate, you've calculated  
17 a royalty base. How do we determine the total  
18 reasonable royalty?

19 A. So in this example, we have -- or in this  
20 slide we have a calculation where we've applied the  
21 50-cent rate to the infringing sales. So in this case,  
22 let's use D-Link as an example. You take 2.9 million  
23 routers -- infringing routers that were sold, multiply  
24 it by the 50 cents per unit to get 1.4 million in  
25 royalties due -- or damages.

1 Q. Okay. And this might be a little bit tedious,  
2 but we need a clear record. How does that work out for  
3 the rest of the Defendants? Can you go through that for  
4 me?

5 A. Sure.

6 So for Belkin, if you take the 4 million  
7 routers -- infringing routers multiplied by the 50  
8 cents, you get \$2 million.

9 For NETGEAR, if you take the 23.7 million  
10 routers, multiply it by 50 cents, you get 11.8 million.

11 For Acer/Gateway, if you take the 7.8 million  
12 computers that infringe, multiply it by 50 cents, you  
13 get \$3.9 million.

14 For Dell, if you take 12.8 million computers,  
15 multiply it by 50 cents, you get 6.4 million.

16 And for Toshiba, if you take the 16.3 million  
17 computers, multiplied by 50 cents per unit, you get 8.1  
18 million.

19 Q. Thank you, Mr. Bone.

20 A. Thank you.

21 THE COURT: All right.

22 Cross-examination.

23 MR. JONES: Thank you, Your Honor.

24 Here, you wanted another notebook, didn't  
25 you?

1 THE WITNESS: Yeah. Thank you.

2 MR. JONES: There you go.

3 Your Honor, for the Court.

4 THE COURT: Thank you.

5 MR. JONES: Mr. Campbell.

6 CROSS-EXAMINATION

7 BY MR. JONES:

8 Q. Good morning, Mr. Bone. Welcome to Texas.

9 A. Thank you. Good morning.

10 Q. I'd like to just first start out with kind of  
11 making sure we talk about the process we've been through  
12 and make sure the jury understand it.

13 You were hired by the Plaintiffs to be their  
14 expert in this case, right?

15 A. That's correct.

16 Q. Then you do a lot of work, look at thousands  
17 of documents, right, sir?

18 A. That's correct.

19 Q. Then you form your opinions, right, sir?

20 A. Yes, sir.

21 Q. And then the next step is you write reports,  
22 and I think it happened in the early part of this year.  
23 You write reports that fully and accurately set forth  
24 your opinions and the basis therefor, right, sir?

25 A. That's correct.



1 Q. So when I refer to your reports, that's what  
2 I'm referring to; fair enough?

3 A. Fair enough.

4 Q. Okay. And then after that, you give a  
5 deposition and you were kind enough -- you hosted me in  
6 Chicago like I'm hosting you in Tyler today, right, sir?

7 A. Yes, sir.

8 Q. It was colder then, wasn't it?

9 A. It was.

10 Q. And I took your deposition, and I was given  
11 the opportunity to ask you questions about your  
12 opinions, right, sir?

13 A. Yes, sir.

14 Q. And we -- and when we refer to your  
15 deposition, that's what we're talking about, right?

16 A. Correct.

17 Q. Okay. Great. Now, another kind of  
18 housekeeping deal. Make sure we all understand it.

19 You've assumed that the patents are valid and  
20 infringed, right?

21 A. That's correct.

22 Q. You have no dog in that fight, no opinion on  
23 that, right, sir?

24 A. That's correct.

25 Q. Okay. But you've assumed that.

1           And you would agree with me that if a patent's  
2   invalid, then damages are zero, right, sir?

3           A.    That's correct.

4           Q.    And if a patent is not infringed, then damages  
5   for that patent are zero, right, sir?

6           A.    That's correct.

7           Q.    Thank you, sir.

8           Now, you have talked about your rates. And in  
9   your report you stated a range of rates, right?

10          A.    That's correct.

11          Q.    And in your report, you said that for Belkin,  
12   NETGEAR, and D-Link -- and those are those router  
13   Defendants, right, sir?

14          A.    That's correct.

15          Q.    -- that the lowest of the range of reasonable  
16   royalty rates would be 34 cents. Do I have that right?

17          A.    That's correct.

18          Q.    Okay. Now, with regard to the computer  
19   Defendants, Acer, Dell, and Toshiba, you told us in  
20   their reports that the lowest royalty -- reasonable  
21   royalty that you saw in that range would be 25 cents per  
22   unit, right, sir?

23          A.    That's correct.

24          Q.    Thank you, sir.

25          Now, this chipset right here, this is a Wi-Fi

1 chip. You've seen these before. You've been in the  
2 courtroom, right, sir?

3 A. I have, yes.

4 Q. This is one made by Intel, and it costs about  
5 \$2.50, right, sir.

6 A. That's my understanding.

7 Q. Okay. Thank you, sir.

8 Now, Dr. Nettles yesterday, he told us, did he  
9 not, that it was the chips that were at issue in this  
10 case, right, sir?

11 A. I believe that was his testimony.

12 Q. And he also told us that when you want to  
13 decide whether or not these patents that you're talking  
14 about, these five patents are infringed, it was the  
15 chips that he tested, right, sir?

16 A. I believe that's correct, yes.

17 Q. And with regard to 802.11n Wi-Fi, that's where  
18 all the magic takes place. I don't understand it all;  
19 maybe you do. But that's where the magic takes place  
20 for 802.11n Wi-Fi; it's on this chip, right, sir?

21 A. I'm not a technical person, but that is my  
22 understanding.

23 Q. Okay. So if we want that laptop, like the one  
24 you got in front of you right here, to do Wi-Fi, it's  
25 got to have one of these chips in it --

1 A. That's --

2 Q. -- fair enough?

3 A. Fair enough.

4 Q. Okay, great.

5 Now, with regard to this particular chip, in  
6 your deposition, you told me that the lowest possible  
7 reasonable royalty for it could be as low as 25 cents,  
8 right, sir?

9 A. That's correct.

10 Q. Thank you, sir.

11 Now, at this point in time, are you telling me  
12 that the reasonable royalty for this chip should be 50  
13 cents?

14 A. Yes.

15 Q. So your -- your position is that the  
16 reasonable royalty for this chip that costs \$2.50, it  
17 should be 50 cents, right, sir?

18 A. It's within my range, yes.

19 Q. Okay. And, in fact, you're also saying --  
20 because there's -- you know, again, about procedures in  
21 this case, there's another expert that's going to  
22 testify in this case, Dr. Perryman, right?

23 A. Correct.

24 Q. And he's an economist, right, sir?

25 A. I don't recall his credentials.

1 Q. Okay. Great. No problem. We'll let him do  
2 that.

3 Okay. But his royalty rate for this chip is  
4 around a penny, right, sir?

5 A. That's what I understand, yes.

6 Q. So your royalty rate is 50 times his royalty  
7 rate; is that correct?

8 A. I'll trust your math.

9 Q. Okay. Great.

10 Now, did you do any analysis of the gross  
11 profit margin concerning this chip?

12 A. No, sir.

13 Q. Did you do any analysis of the net profit  
14 margin concerning this chip?

15 A. No, I did not.

16 Q. Now, at the time of your deposition, did you  
17 tell me that you had not determined the highest royalty  
18 rate that could be charged by Ericsson that would meet  
19 its RAND obligations?

20 A. I think that's correct.

21 Q. Okay. You've made no determination like that,  
22 right, sir?

23 A. No.

24 Q. Thank you.

25 MR. JONES: Now, Your Honor, I need to go

1 into the license agreements at this time and would  
2 request that the courtroom be sealed.

3 THE COURT: We'll seal the courtroom  
4 again, with the Court's apologies. If you're not  
5 covered by the protective order that's been entered in  
6 this case, you need to leave the courtroom at this time.

7 (Pause.)

8 (Courtroom sealed.)

9 (Sealed Portion No. 5 of the Trial  
10 filed under separate cover.)

11 (Courtroom unsealed.)

12 MR. JONES: May I begin, Your Honor?

13 THE COURT: Yes, you may.

14 MR. JONES: Thank you, sir.

15 Q. (By Mr. Jones) Now, the next issue I'd like to  
16 talk about just a little bit is a royalty stacking.

17 When we talk about royalty stacking, what are  
18 we talking about?

19 A. Royalty stacking is an issue -- or can be an  
20 issue if there are numerous companies that have patents  
21 on a particular technology and a company has to take  
22 licenses from everybody that has patents on that  
23 technology.

24 Q. Thank you, sir.

25 Now, in your report, you conclude that with

1 regard to this matter, royalty stacking is a  
2 theoretical, not an actual issue; is that right?

3 A. That is correct.

4 Q. Now, let's talk about that just for a second.  
5 You know that in the 802.11 standard process -- you've  
6 heard the testimony, as the jury -- that certain  
7 companies, during the process, will give letters of  
8 assurances that say: We will license our patents.

9 You know that, don't you, sir?

10 A. Yes.

11 Q. How many companies wrote letters of assurance  
12 concerning 802.11-compliant chips?

13 A. A lot. I don't remember the number offhand.

14 Q. Okay. In Dr. Perryman's report -- again, he's  
15 the economic expert for the Defendants. You know Dr.  
16 Perryman. You've seen his reports, right?

17 A. Yes, I have.

18 Q. Okay. He said that there were 121 companies  
19 that wrote 274 letters of assurance. Does that sound  
20 right?

21 A. I'll take your word for it.

22 Q. Thank you.

23 Now, how many wrote letters of assurances for  
24 802.11n?

25 A. I don't recall offhand.

1 Q. Okay. He said in his report 32 companies with  
2 32 letters of assurance. Does that sound right -- about  
3 right?

4 A. That sounds -- that sounds about right.

5 Q. How many -- let me ask you this: How many  
6 patents were declared essential in that process to  
7 802.11 through those letters? Do you know that figure?

8 A. Some are blanket, so you can't really tell,  
9 but there were a lot.

10 Q. Okay. He said at least 977. Do you disagree  
11 with that?

12 A. No.

13 Q. Okay. Then how many patents were declared  
14 essential to the 802.11n standard in those letters of  
15 assurance?

16 A. A lot were declared by the companies, yes.

17 Q. He said at least 233. Would you agree with  
18 that?

19 A. I'm trying to recall his analysis, but I  
20 believe that's what he said.

21 Q. Okay. Now, with regard to -- and do you  
22 disagree with that figure? Do you contest that figure,  
23 that there are 233 patents that have been declared -- at  
24 least that have been declared essential to 802.11n?

25 A. Again, I'd have to see his analysis to confirm



1 that. I know he had -- he made some estimates, and  
2 without seeing it, it's hard for me to say.

3 Q. Is that -- is that figure in the ballpark?

4 A. I don't know.

5 Q. Okay. All right. Fair enough.

6 Well, let's move on then. Let me -- let me  
7 ask you this: You would agree with me, when we look at  
8 the standard, we don't see in the standard a list of all  
9 the patents that apply, right?

10 A. That's correct.

11 Q. And you would also agree with me that we can't  
12 go to any minute of a committee meeting of the 802.11  
13 where they list all the patents that apply to their  
14 standards, right?

15 A. That's correct.

16 Q. Okay. Now, did you -- in all of your work on  
17 damages and the aspects of these products, did you  
18 determine the Defendants' contribution to 802.11?

19 A. In part, through the analysis of the rates  
20 that other companies were willing to pay.

21 Q. Well --

22 A. So to some extent, yes.

23 Q. Well, let's go -- let's -- do you remember we  
24 talked about that on your deposition?

25 A. Vaguely.

1 Q. Okay. Great. Well, let's try to remind you.

2 MR. JONES: Let's go to Slide 2?

3 Q. (By Mr. Jones) And if go to Slide 2, during  
4 your deposition, I asked you: Were any of the  
5 Defendants involved in the 802.11 standard-making  
6 process before the IEEE?

7 And I'm saying -- I'm just trying to think  
8 through what I recall from that. Does your report  
9 discuss that at all?

10 And you said: I don't believe it does, right?

11 A. That's correct.

12 Q. All right. Thank you, sir.

13 Do you know what standard essential patents  
14 were declared by the Defendants during this process?

15 A. During which process?

16 Q. 802.11 -- 802.11n. Let's go to it  
17 specifically, since that's what we're dealing with in  
18 this case.

19 A. I believe it was a blanket -- blanket  
20 disclosure.

21 Q. And do you know which Defendants made that?

22 A. I'm sorry. I may have misunderstood your  
23 previous question.

24 Q. Do you know which Defendants declared certain  
25 essential patents and wrote letters of assurance?

1 A. I believe all of them did.

2 Q. Thank you, sir.

3 THE COURT: Mr. Jones, let me ask you,  
4 how much longer you would anticipate?

5 MR. JONES: Well, a little bit, Your  
6 Honor.

7 THE COURT: All right. Why don't we go  
8 ahead and take our morning break at this time then.

9 We'll be in recess until 10:35.

10 COURT SECURITY OFFICER: All rise.

11 (Jury out.)

12 (Recess.)

13 COURT SECURITY OFFICER: All rise for the  
14 jury.

15 (Jury in.)

16 THE COURT: Please be seated.

17 All right. You may proceed, Mr. Jones.

18 MR. JONES: May it please the Court.

19 Q. (By Mr. Jones) We were talking about 802.11n  
20 essential patents. You do not have an opinion on  
21 Ericsson's actual share of 802.11n patents, right, sir?

22 A. That's correct.

23 Q. And you also have expressed no opinion in your  
24 report or your deposition about the actual share of the  
25 patents on 802.11n that are owned by the Defendants,

1 right, sir?

2 A. That's correct.

3 Q. Now, we do know --

4 MR. JONES: Could we bring up Slide 6?

5 Q. (By Mr. Jones) This is a document -- it's  
6 Defendant's Exhibit 81. And it's from a presentation  
7 that was made by Ericsson. It's called their WLAN  
8 Licensing Strategy, and it's dated May the 13th, 2012.

9 And you've looked at these documents of  
10 Ericsson, right, sir?

11 A. I have.

12 Q. Okay. And it says that wireless local area  
13 network patents are mainly held by chipset suppliers,  
14 right?

15 A. That's what it says, yes.

16 Q. So expressed in this document, that's their  
17 view, right, sir?

18 A. That's correct.

19 Q. Thank you, sir.

20 MR. JONES: And you can take that down.

21 Q. (By Mr. Jones) Now, if we assume that there  
22 are five patent holders that have patents applicable to  
23 this chip, and they all get a 50-cent rate, like you're  
24 calculating for Ericsson, that would come out to be  
25 collective royalties of \$2.50, right, sir?

1 A. If they each got 50 cents, yes.

2 Q. Okay. Great.

3 And if we were to assume that there are 32  
4 companies that gave letters of assurance, and each of  
5 those companies got a 50-cent rate for their patents,  
6 then the royalties from those patents collectively would  
7 be \$16 on this chip, right?

8 A. If those assumptions held --

9 Q. Yeah.

10 A. -- that would be true.

11 Q. Sure.

12 And if we were to assume that there are 233  
13 patents and they each get 10 cents per patent per unit  
14 royalty rate, then on this particular chip, those  
15 royalties total -- total -- totally would be \$23.30,  
16 right?

17 A. If those assumptions held, that would be the  
18 case, yes.

19 Q. And this chip, as we've already established,  
20 costs \$2.50, right, sir?

21 A. At the current price, I think that's correct.

22 Q. Thank you, sir. I appreciate it.

23 Now, you looked at 400 licenses from the  
24 Defendants; and you, as the Plaintiffs' expert, found  
25 none of them instructive to you on your rate, right,

1 sir?

2 A. That's right.

3 Q. Thank you, sir.

4 Now, you've read the depositions of the  
5 inventors, right, sir?

6 A. Yes, sir.

7 Q. Okay. You've also heard their testimony,  
8 correct?

9 A. Yes.

10 Q. Okay. Now, in all of the documents that you  
11 reviewed, you've not cited to anything in your report  
12 where the inventors valued their patents, right, sir?

13 A. That's correct.

14 Q. Thank you, sir.

15 Now, there's another expert that's going to  
16 testify in this case, a Mr. Matthew Shoemake. And  
17 you've read his reports, right?

18 A. I have.

19 Q. And he has extensive experience with regard to  
20 IEEE committee meetings and things like that, right,  
21 sir?

22 A. I think that's fair to say.

23 Q. Thank you, sir.

24 At your deposition, you could tell me nothing  
25 in his report that was factually incorrect about how he

1 said the IEEE viewed RAND, right, sir?

2 A. That's correct.

3 Q. Thank you, sir.

4 Now, finally, laptops have many components and  
5 many features, right, sir?

6 A. Yes. I said that earlier, yes.

7 Q. Right. Thank you, sir.

8 And you've done no survey-type analysis to  
9 show us which of those components or which of those  
10 features drive sales, right, sir?

11 A. That is correct.

12 Q. Okay. Same thing's true about routers. They  
13 have numerous features, correct? I think you and I, at  
14 your deposition, agreed there were lots of features;  
15 fair enough?

16 A. We did agree to that, yes.

17 Q. And you've done no survey work or that type of  
18 analysis to determine what drives sales for routers,  
19 right, sir?

20 A. That's correct, because I didn't need to.

21 Q. And then finally, you agree with me that these  
22 chips, they have features beyond the patented features,  
23 correct?

24 A. I agree.

25 Q. Okay. And you've done no survey work or other

1 type of analysis to determine what drives sales of these  
2 chips, right, sir?

3 A. That's correct.

4 Q. Thank you, sir.

5 MR. JONES: Your Honor, I pass the  
6 witness.

7 THE COURT: All right. Redirect?

8 MR. CAMPBELL: Thank you, Your Honor.

9 Mr. Jones, can I borrow your exhibit?

10 MR. JONES: You sure can.

11 If you lose it, you owe me \$2.50.

12 MR. CAMPBELL: \$2.50. All right.

13 REDIRECT EXAMINATION

14 BY MR. CAMPBELL:

15 Q. \$2.50, Mr. Jones says I would owe him for  
16 this. Let's say I don't lose it, and he sells me this  
17 chip for \$2.50, what can I do with this?

18 A. Not much, unless you put it in something.

19 Q. Need to build a computer or a router, don't I?

20 A. That's correct.

21 Q. I -- well, what -- well, if I just put this on  
22 this table, take it home, what's it going to do for me?

23 A. Not much.

24 Q. \$2.50.

25 Remind me, when does the hypothetical



1 negotiation take place?

2 A. It would have occurred in 2007 when the  
3 Defendants first started using the products that  
4 infringe the patents.

5 Q. 2007.

6 And what did Intel sell an 802.11n chip for in  
7 2007?

8 A. \$29.

9 Q. \$29?

10 A. Yes.

11 Q. Not \$2.50?

12 A. No.

13 Q. HP, do they use some of Intel's chips?

14 A. Yes, they do.

15 Q. Okay. I want to go back to following the  
16 money.

17 A. Uh-huh.

18 MR. CAMPBELL: Unfortunately, Your Honor,  
19 to follow the money, we have to get into the  
20 confidential information of the licenses. I apologize.

21 THE COURT: All right. We'll seal the  
22 courtroom again. And if you're not covered by the  
23 protective order that's been entered in this case, you  
24 will need to leave the courtroom again during this  
25 testimony.

1 (Pause.)

2 (Courtroom sealed.)

3 (Sealed Portion No. 6 of the Trial  
4 filed under separate cover.)

5 (Courtroom unsealed.)

6 THE COURT: All right. Counsel, if you  
7 would please approach.

8 (Bench conference.)

9 THE COURT: I have a question that's  
10 crossed out. I won't read it, but the one that's not  
11 crossed out is: Not the chip hardware, but the software  
12 is the issue, correct?

13 MR. JONES: I don't think he knows that.

14 MR. CAMPBELL: It's more of a technical  
15 question.

16 THE COURT: Huh?

17 MR. CAMPBELL: It's more of a technical  
18 question. He's not going to know the answer to that.

19 (Bench conference concluded.)

20 THE COURT: Ladies and Gentleman of the  
21 Jury, excuse -- let me excuse you for just a moment  
22 while I visit with the witness about something.

23 COURT SECURITY OFFICER: All rise for the  
24 jury.

25 (Jury out.)

1 THE COURT: Please be seated.

2 All right. There is a -- there are some  
3 questions listed, but they are marked through, and then  
4 there's a question that's asked at the end. And I'll  
5 first read the questions that are marked through, and I  
6 think it will perhaps give some context.

7 And the questions that are marked through  
8 are as follows: I have a Samsung tablet with Wi-Fi.  
9 Why not list it? And the other companies not listed.  
10 TVs with Wi-Fi, question mark. Not the Intel chip, but  
11 the technology Wi-Fi is 50 cents.

12 That's all marked through, so I don't  
13 propose to ask any of that.

14 Then the question that they have not  
15 marked through is: Not the chip hardware, but the  
16 software is the issue, correct?

17 And that would be the question to the  
18 witness.

19 And do you know the answer to that  
20 question, first, or could you answer that question in a  
21 meaningful way?

22 THE WITNESS: Well, what I could say  
23 about that is, again, going back to the market rates.

24 So there's these -- in the real-world  
25 negotiations they have these technical discussions, and

1 so the parties would have understood what the patents  
2 relate to. And so that's what they were willing to pay  
3 for, based on their understanding of where the  
4 technology was embodied, in the source code or the chip.

5 THE COURT: Okay. All right. Do  
6 Plaintiffs have an objection to the question?

7 MR. CAWLEY: No.

8 THE COURT: Does Defendant?

9 MR. JONES: Yeah, we do, Your Honor.  
10 No. 1, I don't think it answers the  
11 question.

12 No. 2, it's clearly outside the scope of  
13 this particular witness's expertise.

14 And No. 3, you know, we get these reports  
15 where experts, you know, give us their opinions. This  
16 would be an opinion that's totally outside the scope of  
17 his report and something we couldn't prepare rebuttal  
18 for.

19 MR. CAWLEY: Your Honor, here's my one  
20 person's view of what that question gets to. My opinion  
21 is that it gets to a misunderstanding that the chip is  
22 simply a bare piece of hardware that has no software in  
23 it or associated with it; when, in fact, we all know  
24 that there's firmware or -- or software in the chip.

25 And I think that this witness could

1 productively tell this -- tell the jurors the chip  
2 includes both, and his opinion is based on both.

3 MR. JONES: Your Honor, could I speak to  
4 that?

5 THE COURT: Yes, uh-huh.

6 MR. JONES: Your Honor, my point is this:  
7 I think this question is going to be answered when we  
8 have witnesses up there that testify about the products,  
9 the chips, and how they work. It's clearly outside the  
10 scope of this expert's knowledge and his opinions, and  
11 for that reason should not be asked.

12 THE COURT: All right. Let me ask the  
13 witness.

14 Do you -- tell me again -- if you would,  
15 speak into the microphone, what your answer to that  
16 question would be: Not the chip hardware, but the  
17 software is the issue, correct?

18 Do you feel that you can answer that  
19 question? And if not, that's fine; but if you do, then  
20 how?

21 THE WITNESS: So my response to that  
22 would be while I'm not a technical person, I can't speak  
23 directly to the software and the hardware aspect of it,  
24 what we can say in the context of damages is through the  
25 technical discussions, regardless of where it's

1 embodied, the market rates indicate the value of that,  
2 whether it's in the source code or the chip.

3 MR. JONES: Your Honor, I think he just  
4 said he didn't know the answer to the question.

5 No. 2, I would just point out that there  
6 have been technical experts that testified on this very  
7 issue.

8 THE COURT: All right. The Court will  
9 overrule the objection.

10 I -- what I want to do, I've -- we've  
11 invited the jury to ask questions, and they're not  
12 always going to artfully draft their question, but I  
13 think they give enough of an indication and I think his  
14 answer is consistent with -- with damages, as he  
15 annunciated it. And you're correct, that you'll have  
16 other witnesses that can expand on this later. But I'm  
17 going to allow that jury question.

18 So bring the jury in, please.

19 MR. JONES: Thank you, Your Honor.

20 COURT SECURITY OFFICER: All rise for the  
21 jury.

22 (Jury in.)

23 THE COURT: All right. Please be seated.

24 All right. Mr. Bone, we have a question  
25 for you from the jury, and the question is this:

1                   Not the chip hardware, but the software  
2 is the issue, correct?

3                   THE WITNESS: So -- so while I'm not a  
4 technical expert, so I can't specifically address the  
5 software versus the hardware issue in terms of where it  
6 is; what I can tell you, from the con -- from the -- in  
7 the discussion of damages, as we've heard before, there  
8 are -- in the actual real-world negotiations, there were  
9 technical discussions that addressed Ericsson's patents  
10 and where they relate to the software and the chip. And  
11 their understanding of where it was, that's what the  
12 companies were willing to pay for, in terms of the  
13 market rates.

14                  THE COURT: All right. Thank you.

15                  All right. Any follow-up questions from  
16 the Plaintiffs?

17                  MR. CAMPBELL: No, Your Honor.

18                  THE COURT: From the Defendants?

19                  MR. JONES: Yes, just one, Your Honor.

20                  THE COURT: All right.

21                  FURTHER CROSS-EXAMINATION

22 BY MR. JONES:

23                  Q. When we first started your testimony, we  
24 talked about the fact that you had listened to the  
25 testimony of the Plaintiffs' liability expert in this

1 case, Dr. Nettles, right, sir?

2 A. Yes, sir.

3 Q. Okay. Thank you, sir.

4 And he said -- he said that it's the Wi-Fi  
5 chips that are at issue in this case, right, sir?

6 A. That's my understanding.

7 Q. Thank you, sir.

8 MR. JONES: I pass the witness, Your  
9 Honor.

10 THE COURT: All right. Any redirect?

11 MR. CAMPBELL: No, Your Honor.

12 THE COURT: All right. Thank you. You  
13 may step down, Mr. Bone.

14 All right. Who will Plaintiffs' next  
15 witness be?

16 MR. CAWLEY: Your Honor, at this time  
17 we've got a few exhibit issues to finalize.

18 THE COURT: All right. You have some  
19 exhibits you wish to -- and I apologize, I failed to ask  
20 both parties this morning. So do you have an exhibit  
21 list for today?

22 MS. MOORE: Yes, Your Honor, we have a  
23 pre-admit exhibit list for today. It's got about 10  
24 items on it. The first six are agreed, and I don't  
25 believe we have a position yet on the last four, which



1 are PX 562 through PX 565.

2 MR. DE VRIES: I was able to obtain  
3 copies of these, and we have no objections to any of  
4 those on that list.

5 THE COURT: All right. So the title of  
6 that list is what?

7 MS. MOORE: Yes, Your Honor. It's  
8 Plaintiffs' Pre-admitted Exhibit List for June 6th,  
9 2013.

10 THE COURT: All right. That will be  
11 marked as Plaintiffs' Exhibit List No. 4.

12 And are -- there are no objections; is  
13 that correct?

14 MR. DE VRIES: That's correct, Your  
15 Honor.

16 THE COURT: All right. The exhibits on  
17 that list are admitted.

18 Do Defendants have a similar list?

19 MR. DE VRIES: We do, Your Honor. It's  
20 entitled Defendants' List of Pre-admitted Exhibits for  
21 June 6th, 2013.

22 THE COURT: All right. That will be  
23 marked as Defendant's Exhibit List No. 5 -- excuse me,  
24 No. 4.

25 Are there any objections to the exhibits

1 contained on that list?

2 MS. MOORE: No, Your Honor.

3 THE COURT: All right. Those exhibits  
4 are admitted.

5 All right. Who will Plaintiffs' next  
6 witness be?

7 MR. CAWLEY: Your Honor, at this time the  
8 Plaintiff Ericsson rests.

9 THE COURT: All right. Plaintiff rests.  
10 All right. Who will Defendants' first  
11 witness be?

12 MR. VAN NEST: Excuse me, Your Honor. We  
13 would like to speak briefly with the Court on motions.

14 THE COURT: All right.

15 (Bench conference.)

16 THE COURT: Speak up a little louder.

17 MR. VAN NEST: I'm sorry.

18 THE COURT: Speak in a normal, quiet  
19 voice. If you whisper, she doesn't hear it; but if you  
20 can just talk in a low regular voice.

21 MR. VAN NEST: This is about JMOLs.

22 THE COURT: Yeah. We can do that on a  
23 break.

24 Any objection to that procedure on the  
25 JMOLs?

1 MR. STEVENSON: No objection.

2 THE COURT: We'll do them at the noon  
3 break.

4 MR. VAN NEST: Thank you, Your Honor.  
5 (End of bench conference.)

6 THE COURT: Who will Defendants' first  
7 witness be?

8 MR. VAN NEST: Your Honor, Defendants  
9 call Mr. James Johnson.

10 THE COURT: All right. Mr. Johnson.

11 MR. DAUCHOT: Your Honor, may we proceed?

12 THE COURT: Yes, you may.

13 JAMES JOHNSON, DEFENDANTS' WITNESS,

14 PREVIOUSLY SWORN

15 DIRECT EXAMINATION

16 BY MR. DAUCHOT:

17 Q. Good morning.

18 A. Good morning.

19 Q. Please introduce yourself to the members of  
20 the jury.

21 A. Hi, I'm Jim Johnson.

22 Q. All right. Mr. Johnson, you were introduced  
23 earlier as James. Is it James or Jim?

24 A. I prefer Jim.

25 Q. All right, sir. Where do you work?

1 A. I work at Intel Corporation.

2 Q. And how long have you worked at Intel?

3 A. Just over 29 years.

4 Q. All right. And we'll get into a bit more  
5 detail, but just at a very high level, what is Intel or  
6 who is Intel?

7 A. Intel's now the largest chip company in the  
8 world.

9 Q. And when was the company founded?

10 A. It was founded in 1968.

11 Q. And where was it founded?

12 A. It was founded in a -- in an area of Santa  
13 Clara, California, just south of San Francisco, if you  
14 haven't been there.

15 Q. All right. And who started Intel? Who are  
16 the founders?

17 A. Three men named Robert Noyce, Gordon Moore,  
18 and Andy Grove.

19 Q. All right. What were their accomplishments  
20 through Intel? Can you explain that to the jurors?

21 A. Well, I joined somewhat after -- after they  
22 founded the company, but they were pretty fantastic.

23 They -- they had innovations and -- and  
24 developed a semiconductor which we call chip in this --  
25 in this case, but semiconductor products and

1 manufacturing processes that really revolutionized, in  
2 my tenure at Intel, what the computer industry has  
3 become. I mean, there wasn't a -- really a phrase  
4 coined personal computer that many people knew, but now  
5 we all have one.

6 Q. All right, sir. Have the founders of Intel  
7 been honored in any way for their accomplishments?

8 A. Yes, they've -- they've been honored in -- in  
9 many, many ways, nationally and internationally. I've  
10 actually brought a couple of pictures just to kind of  
11 personalize it, if I could.

12 Q. All right. And let's put up the first one  
13 that you put together, Slide 1. I think it's --

14 MR. DAUCHOT: Your Honor, just for the  
15 record, it's Defendants' Demonstrative 1.

16 THE COURT: All right.

17 Q. (By Mr. Dauchot) Here we go.

18 A. Yeah, so here's the picture. It's a slide of  
19 three pictures actually. So on the left, you see Robert  
20 Noyce, and so first you see him receiving one of the  
21 national medals. One's for science, and one's for  
22 technology -- I can't remember which order is which --  
23 from Jimmy Carter.

24 And then on the lower left, you see him  
25 receiving a similar award from Ronald Reagan. So

1 there's Robert Noyce.

2 And then on the right is Gordon Moore -- also  
3 known for Moore's Law. He predicted over 30 or 40 years  
4 ago what would happen to semiconductor manufacturing,  
5 and he was right -- getting it from George Bush.

6 Q. All right. How about -- I think we leave one  
7 of the inventors out, right?

8 A. Yes. On the next slide, if you don't mind  
9 forwarding it. And this was in my tenure there. Andy  
10 Grove, and we were -- we were quite pleased as a company  
11 when he was awarded Man -- Time -- of the Year for his  
12 innovation.

13 Q. Have you personally worked with any of these  
14 individuals?

15 A. Andy was the hands-on President and CEO during  
16 my tenure when he was leading the company, so I spent a  
17 lot of time with him.

18 Q. All right, sir. And we'll get into a bit more  
19 what you've -- you've done at Intel. But just from a --  
20 from a big-picture standpoint, how many employees does  
21 Intel have?

22 A. We have -- we have about 110,000 worldwide,  
23 with over half here in the U.S.

24 Q. All right, sir.

25 And just to give the jury a feel for what --

1 what Intel does or who it is, where in the United States  
2 does Intel have facilities?

3 A. I -- I won't go through the -- I won't go  
4 through the whole U.S., but the primary state -- some of  
5 the primary states are Oregon, which is our largest  
6 facility; California; and we have a big facility in  
7 Arizona; we have a facility in New Mexico; and we have a  
8 facility here in Texas, too.

9 Q. All right. So we're in Texas. Where in Texas  
10 is the facility?

11 A. It's in Austin.

12 Q. All right. Just very briefly, what does Intel  
13 do in Austin?

14 A. They make chips primarily for the tablet and  
15 the SmartPhone devices.

16 Q. And how many employees at that facility?

17 A. There's about a thousand.

18 Q. All right. And I just want to focus a bit on  
19 Intel's relationship with some of the higher education  
20 facilities that we have here in the states. Any  
21 relationship with the University of Texas?

22 A. Yes. So every state where we have -- have  
23 facilities, we tend to do this. And so I'll focus on  
24 Austin where we'll -- in that thousand -- I said make,  
25 they really design the products, not make them. And we

1 hire about a hundred engineers -- hundred interns,  
2 largely engineers, largely from the University of Texas,  
3 not only.

4 And we kind of do that in each state we live.  
5 We try and hire local interns because it's -- it's good  
6 for them because they get experience, but it's great for  
7 Intel because we have a pipeline of new engineers coming  
8 into the company.

9 Q. Now, does Intel exclusively focus on higher  
10 education?

11 A. No. We have local programs and national  
12 programs. Kindergarten through 12 is -- is -- is one.

13 Q. And tell us a little bit about that.

14 A. Yeah, well, I'll -- I'll just stay with the  
15 local theme since we're here, but it applies nationally.

16 We have something called the Intel Teach  
17 Program. And it's a 40-hour -- 40-hour curriculum that  
18 we offer teachers in K through 12 education, and we give  
19 them computer skills and training. And when they  
20 complete that 40 hours, then we help them take that back  
21 into their classroom and curriculum. And I mention that  
22 one, because we've had the highest participation rate of  
23 any state here in Texas, with over 28,000 teachers that  
24 have been through that program.

25 Q. All right. Now, any school here in Texas,



1 particularly near and dear to your heart?

2 A. Well, recently, yes, my son just graduated  
3 from the Ranch Management Program at TCU, Texas  
4 Christian in Ft. Worth.

5 Q. All right, sir. How many kids do you have?

6 A. I'm blessed with three sons.

7 Q. And you're married, sir?

8 A. Yes, I -- yes, I am. I met my wife at Intel a  
9 couple of years in, and we've been married ever since.

10 Q. I take it that wasn't the reason you chose to  
11 join Intel?

12 A. I was there before her.

13 Q. All right, sir. And explain to our jurors why  
14 you decided to join Intel.

15 A. I was fortunate enough, when I was getting out  
16 of college, to have a few other offers. And the last  
17 company I interviewed with was with a company named  
18 Intel. It was like one-fiftieth the size it is now in  
19 terms of revenue. And what impressed me with that  
20 company, they gave me the most grueling interview I'd  
21 ever experienced, 10 hours, 30-minute sections and --

22 Q. You haven't had your cross-examination yet, so  
23 we'll see if it's the most grueling.

24 A. Second most, maybe.

25 But what I was impressed with is their

1 discipline and organization. You could really tell it  
2 was a company going somewhere; focused on innovation and  
3 the customer.

4 Q. All right. Mr. Johnson, what is it that you  
5 do at Intel today?

6 A. I'm a vice president of the Intel Architecture  
7 Group.

8 Q. And what is the Architecture Group?

9 A. The Intel Architecture Group is Intel's  
10 largest business, and it's comprised of primarily  
11 computer chips and communications chips; not solely, but  
12 that's how it characterizes its -- its biggest  
13 businesses.

14 Q. All right. And I think you told us a little  
15 bit about the computer chips earlier. Let's -- let's  
16 focus on the communication chips. What are those?

17 A. The communications chips are largely what  
18 we've been talking about today. There's communications  
19 chips for wired communication, like many of these  
20 computers that the -- is wired up in the courtroom uses,  
21 something called Ethernet. We haven't been talking  
22 about. And then there's a communications chip for  
23 wireless called Wi-Fi, and there are many others that  
24 have been mentioned by other testifiers.

25 Q. All right. As between the two chips, the

1 computer chips that actually run the computers, if you  
2 will, and the communication chips, which type of chip is  
3 your work focused on at Intel?

4 A. Primarily it's been communications chips for  
5 computers.

6 Q. All right. And explain to us how you were  
7 involved in the communication chip site?

8 A. In -- prior to 2002, I was involved on the  
9 wired communications chip side; but in 2002 through late  
10 2005, I was the general manager of our wireless  
11 networking group, solely focused on Wi-Fi products.

12 Q. And, generally speaking, what did that group  
13 do, sir?

14 A. That group really had two fundamental  
15 responsibilities. At the highest level was a product  
16 group, so we delivered products like we've been holding  
17 up here. And, really, one part of my job was working  
18 with the business side to define what we needed from the  
19 standard and what type of product feature sets we needed  
20 when.

21 And then I led the engineering side that would  
22 develop the hardware and software to deliver those  
23 products. They worked for me through my management  
24 team.

25 Q. All right, sir. Are you an electrical

1 engineer?

2 A. No, sir, I'm not.

3 Q. All right. And so as far as the -- the detail  
4 behind the chips and the -- you know, the brains on the  
5 chip and that sort of stuff, should we look to you for  
6 that information, sir?

7 A. I depend on my team, as we should all depend  
8 on the technical team here.

9 Q. All right, sir.

10 Now, can you give us a sense of what Intel was  
11 trying to accomplish through its work in Wi-Fi?

12 A. Yes. So the -- the big thing that was going  
13 on, if I just step back one step, is most of us had been  
14 using desktop computers. And a new thing was happening  
15 called the notebook computer. And we were coming to the  
16 conclusion that we needed another way to hook up to  
17 local area networks, other than carrying a wire around,  
18 which we literally did. And so we started to focus on  
19 Wi-Fi as an alternative to hook up these notebooks.

20 Q. All right. Now, was -- you mentioned Wi-Fi as  
21 a wireless communication. Was that the only type of  
22 wireless around that day?

23 A. Oh, no. There -- there were other  
24 alternatives. The primary alternative that -- that was  
25 being considered or was being used were cellular cards,

1 usually attached to the outside of a -- a notebook, but  
2 some were trying to put them inside a notebook, too,  
3 some -- some of our customers.

4 Q. All right. Now, if you had cellular wireless  
5 communication, why Wi-Fi?

6 A. We really had two things we wanted to  
7 accomplish that was different -- different. Is we  
8 wanted to get on a trajectory of very low cost, so we  
9 could have high -- high -- high attach rates of -- of  
10 wireless to a notebook, and we wanted universal access,  
11 so wherever you went for that network, you could attach.

12 So we called it interoperability. Here, we  
13 wanted every Wi-Fi network to be interoperable.

14 Q. And when you speak about universal access, can  
15 you explain to the jurors what that -- what that would  
16 mean to them?

17 A. Yes. So I guess I'll -- I'll -- what it means  
18 for me, especially being here, is I can go to a  
19 Starbucks coffee shop; and if I see Wi-Fi advertised and  
20 I open my notebook, I can connect to that Wi-Fi. I  
21 don't care whose chip or whose router -- now that we all  
22 know what routers are -- in Starbucks.

23 Or actually, I go to Einstein Bagels for my  
24 breakfast in the morning. They have free Wi-Fi. I  
25 don't know whose Wi-Fi's chip. I don't know who --

1 whose Wi-Fi system, but it just works.

2 Q. All right, sir. What was -- can you explain  
3 what -- what Intel's ultimate goal was, at least when  
4 you were there, with respect to the Wi-Fi -- the Wi-Fi  
5 chips?

6 A. Well, a handful of us were trying to  
7 communicate what we were trying to accomplish, so we  
8 came up with something we coined, the five-minute rule.

9 Wasn't a marketing campaign or anything. It  
10 was just something we were trying to accomplish. And  
11 the five-minute rule is simply if you're walking in a  
12 city, we wanted Wi-Fi to be something that you could  
13 walk five minutes and get connected.

14 Or if you're in a suburb like a few blocks out  
15 of this city, within five minutes you could drive to a  
16 coffee shop or a diner and get a Wi-Fi connection.

17 Q. Now, Dr. Nettles, yesterday in his testimony,  
18 testified about Wi-Fi being available to our -- to our  
19 soldiers in Afghanistan. Do you remember that  
20 testimony?

21 A. Yes, I do, sir.

22 Q. Do you have any familiarity with that, sir?

23 A. Some good and some bad.

24 Q. All right, sir. Is -- does the five-minute  
25 rule apply out there?

1 A. Not quite.

2 Q. How do you know that?

3 A. I know that because my son served -- my oldest  
4 son served in Afghanistan, and I had no connection. If  
5 he was on a major base, which we couldn't get Wi-Fi  
6 connections in Afghanistan during his tenure a few years  
7 ago, it didn't work. The only way I could communicate  
8 with him was through satellite, so we still have a lot  
9 of work left to do.

10 Q. Now, who is the person at Intel who decided to  
11 place the Wi-Fi technology on the Intel chips?

12 A. As the general manager of the group, it was my  
13 responsibility.

14 Q. All right, sir.

15 What I'd like to do is focus a little bit on  
16 the chip. We've heard quite a bit about it, and I think  
17 that Mr. Jones was referring to it.

18 MR. DAUCHOT: And, Your Honor, the chip  
19 has been marked as Exhibit 528. It's on the exhibit  
20 list, and with the Court's permission, could I  
21 distribute that chip to the members of the jury so they  
22 could just hold it in their hands?

23 THE COURT: Excuse me?

24 MR. DAUCHOT: Would it be okay if I have  
25 the Court's permission to distribute the chip to the

1 jurors so they can hold it in their hands?

2 THE COURT: Yes, you may.

3 MR. DAUCHOT: All right. Thanks.

4 I'm going to take two out. You can pass  
5 it down.

6 THE COURT: I'll just caution the jury,  
7 please don't eat any of those chips.

8 [Laughter]

9 MR. VAN NEST: That's the ultimate free  
10 Wi-Fi.

11 Q. (By Mr. Dauchot) Here, Mr. Johnson, I'll hand  
12 you a copy.

13 A. Yeah.

14 MR. DAUCHOT: I think I have an extra  
15 copy for the Court.

16 Your Honor, are you interested in having  
17 one or --

18 THE COURT: I'm fine. Thank you.

19 A. Yes, sir --

20 Q. (By Mr. Dauchot) All right. Hold on. Let's  
21 make sure everyone has them.

22 All right, sir. So we have distributed  
23 Exhibit 528 -- or copies of it to the Members of the  
24 Jury. And you have one in your hands.

25 What are we looking at?



1           A.    Well, so -- just so we're all on the same  
2 orientation, if you could put it so the little gold edge  
3 is facing down, and I'll start at the top.

4                   If you go to the very top, you're going to see  
5 two little round buttons or little round circles.  
6 That's where the antennas from the notebook connect, so  
7 they're often in the screen. And then the wires have to  
8 come through the hinge and they hook it up to those  
9 round buttons. That's how you get the signal into the  
10 notebook.

11                   And then the center of this, the big black --  
12 big black component, that's the chip that Intel designs,  
13 and is where the majority of the engineering goes into.

14           Q.    Now, Mr. Johnson, if I could interrupt you one  
15 second.

16                   There's a question from the jurors on the  
17 question of where of the -- if the software is actually  
18 on the chip. And if you could just explain that to us.

19           A.    Yeah. And so there's -- there's many types of  
20 software, but there's really, really critical software  
21 that we write that sits on the chip.

22           Q.    And where is that on the chip, as the jurors  
23 are looking at it?

24           A.    Oh, it is inside the chip, and there's a  
25 portion of the chip that's memory. Just like our brain

1 has memory, there's a little bit of memory on the chip  
2 so the software can sit inside that.

3 Q. All right. And you were going to explain the  
4 black center?

5 A. Yeah, so the black center is how we manifest  
6 our product. That's -- that's the core of the Wi-Fi  
7 product that we sell.

8 However, to put it in -- to put it into a --

9 Q. You just need to back away from --

10 A. I'm sorry. I'm sorry. Can you guys hear me  
11 okay?

12 Okay. So -- so then the reason we put on this  
13 green -- I'll call it a green carrier or a module -- and  
14 now if you look at the very bottom, you see these  
15 gold -- we call them gold fingers. Those snap into a  
16 socket on the board of a notebook or tablet.

17 And so there's two reasons for that. Reason 1  
18 is these computer OEMs we've been talking about,  
19 unfortunately don't only -- only want to buy from one  
20 supplier. They want a choice from several suppliers,  
21 and that's how they get best pricing and best features.

22 And then the second thing is the standards are  
23 evolving, and they may choose to put a different  
24 versions of the standard in at different times,  
25 especially during transitions. So that's why it's on a

1 module.

2 Q. All right. And just to give the jurors a  
3 sense -- I mean, so these chips wind up on the circuitry  
4 of computers.

5 And I remember during opening statement -- or  
6 I'm sorry -- during voir dire, I think counsel for  
7 Ericsson proposed to the jury, you go to a store, and  
8 you get a laptop with a chip, and you get a laptop  
9 without a chip, which one would be more appealing to  
10 you.

11 A. Yes.

12 Q. Do you remember that line of questioning?

13 A. Yes, sir.

14 Q. Did that question strike you as odd at all?

15 A. Yes, because --

16 Q. Why so?

17 A. Because if not every, virtually every notebook  
18 has Wi-Fi. People don't buy notebooks without Wi-Fi  
19 anymore.

20 Q. All right. And why is that?

21 A. Because it's at extremely low cost, so you can  
22 have -- basically, the computer OEMs don't even think  
23 about including it anymore.

24 And then, secondly, for all of us, if it says  
25 Wi-Fi, you can connect. So you don't have to know it's

1 a Wi-Fi from Company A or a Wi-Fi from Company B. If  
2 it's Wi-Fi, it's Wi-Fi. So you can just use it.  
3 Those are the two fundamental reasons in my view.

4 Q. All right. Now, Mr. Johnson, you introduced  
5 us to the notion of what Intel, and for that matter,  
6 other chip makers were trying to accomplish, and this is  
7 the low-cost interoperability.

8 What did it take to achieve that?

9 A. It takes really -- I guess I would summarize  
10 it in two things, is we, as a company, have to  
11 independently design and innovate what we want to  
12 accomplish in Wi-Fi.

13 So when we're going from this generation to  
14 the next, it takes some of our best engineers'  
15 hard-working innovation to create that next technology  
16 of Wi-Fi.

17 Q. And what else does it take?

18 A. The second thing, which is very critical, is  
19 they have a process -- we've been calling it IEEE. They  
20 are members of a standards body where they can go  
21 together to share their ideas and innovations with the  
22 other engineers from other companies to come up and  
23 conclude an interoperable standard for the next version.

24 Q. All right. How much has Intel spent on R&D  
25 just -- just for the Wi-Fi part?

1 A. Yes. So --

2 Q. Not total, because we've heard total R&D  
3 numbers from Ericsson, and I just want to focus strictly  
4 on the -- on the Wi-Fi.

5 A. Yeah. So for the group I manage and then  
6 continued on after me, it's approaching \$2 billion --

7 Q. All right.

8 A. -- for R&D.

9 Q. Okay. Now, how many engineers does Intel have  
10 working or has had -- has Intel had working on Wi-Fi  
11 over the years?

12 A. Well, under -- under my watch, we were at  
13 about 650 engineers plus or minus 25, based on when you  
14 would have looked at the group.

15 Q. Now has Intel been awarded patents for the  
16 tech -- for the Wi-Fi technologies that it has  
17 developed?

18 A. Yes. We've had -- we have patents for Wi-Fi.

19 Q. All right. Mr. Johnson, I want to focus a  
20 little bit on the second prong of it.

21 So you have the -- the innovation that happens  
22 inside the shop, and then you mentioned the  
23 collaboration.

24 Can we focus on that? Just generally, what's  
25 the process? Because we're going to hear more from --

1 from others as well. But just very generally, high  
2 level.

3 A. I'll stay at the general level because there's  
4 experts coming that live this day to day.

5 But they're -- they're -- IEEE has a great  
6 process, with a lot of discipline, on how to gather  
7 people's inputs; people's inputs being engineers from  
8 each of the companies.

9 And then they have a process for making  
10 selections down to a recommendation that eventually they  
11 all ratify as the standard. And so everyone has to  
12 listen to each other's ideas and then compromise.

13 Q. All right. So what do we -- what we have on  
14 the one hand is, we have the in-house innovation -- and  
15 against your competitors, right?

16 A. Yes. We are competitors at the end of the  
17 day.

18 Q. And then on the other hand, you have this  
19 collaborative step that's required to achieve the  
20 low-cost interoperability.

21 Can you generally describe for the jurors how  
22 those two competing interests get harmonized? How do  
23 you -- how do those competing interests get resolved, at  
24 least from your experience?

25 A. From my experience, I guess I would say it's a

1 balanced approach. You -- you absolutely want your  
2 ideas to be accepted because then you might have a  
3 little bit of a lead on the next product but not a  
4 lot -- not a big lead, but a little bit of a lead.

5 And so what typically happens is, these things  
6 start coming together. We start having some log jams.  
7 And so let's say the chipset companies can't quite agree  
8 on the approach to take, but then we could escalate it  
9 to me, and my counterparts at, say, Atheros, or someone  
10 like that, and we would talk and say: Hey, we've got to  
11 resolve the log jam.

12 Or an equipment manufacturer may want their  
13 proprietary features that only they support in our  
14 components. And we would have to explain to them, no,  
15 we're an open standard; we collaborate.

16 So I guess at the end -- I'm going too long.

17 Q. No, no, no. That's all right.

18 A. I guess my summary is, it's tough for  
19 engineers to give up their ideas, but we always have to  
20 come back to interoperability trumps self-interest.

21 Q. All right, sir. I want to shift back to the  
22 standard-setting groups.

23 And did Intel have any formal leadership roles  
24 in those standard-setting organizations, any particular  
25 802.11, the stuff you worked on?

1           A.    Yeah, I'll focus on 802.11, or, again, I'll  
2 state general.

3                    You know, there are chairmanships of  
4 standards. There are authors of specific parts of the  
5 standards. There's -- people read and ratify those  
6 parts. And then there's people that agree to adopt  
7 them.

8                    And so Intel had several different leadership  
9 positions throughout the history of 802.11n. And, in  
10 fact, we have one of those folks that have been  
11 extremely involved coming here to testify this week.

12          Q.    Who's that?

13          A.    This is Duncan Kitchin.

14          Q.    All right. There was a little bit of  
15 discussion over the price of Wi-Fi, and I think that was  
16 the unsealed portion, so I don't know if you were seated  
17 here when that was discussed, the price of Wi-Fi chips  
18 dropping.

19          A.    Yes, I did. I heard that.

20          Q.    Can you -- do you have any experience with  
21 that? First from the business perspective.

22          A.    Yeah. I'll give -- I'll just give you the  
23 experience I had when I was running the Wi-Fi group.

24                    In 2002, before we launched the first Wi-Fi  
25 product with our chip -- and these are general. I don't



1 have the specific. But the general attach rate to  
2 notebooks by computer manufacturers of Wi-Fi was  
3 20 percent or less, meaning if they shipped a hundred  
4 computers, only 20 would go with Wi-Fi.

5 And by the time I left, you know, to my next  
6 job in late '05, the attach rates were growing like  
7 60 or 70 percent, if I remember the ballpark number  
8 right.

9 Q. And when -- when you say attach rates, what is  
10 that?

11 A. That means that -- can you -- back to the  
12 question, do you buy a notebook with Wi-Fi or without  
13 Wi-Fi? When I say attach, it means Wi-Fi is in there.

14 So two out of ten notebooks when I started,  
15 approaching six or seven, and I would say now, if it's  
16 not a hundred percent, it's a virtual -- virtually a  
17 hundred percent as the prices -- as and because the  
18 prices have dropped about tenfold.

19 Q. And you started back in 2000, you were saying?

20 A. Yeah. 2002 is when I focused solely on Wi-Fi.

21 Q. All right, sir. Just to conclude here, how  
22 would you describe the success or lack of it -- I think  
23 I know where you stand on it -- but of the 802.11 Wi-Fi  
24 standard?

25 A. It's on one hand and the other.

1           On one hand, it's exceeded, at least, what my  
2   expectations were when we started the Wi-Fi project.

3           But on the other hand, there's a lot of people  
4   in the world yet that don't have notebook computers.  
5   They can't afford notebook computers. So we must keep  
6   innovating and delivering more capability for lower  
7   price.

8       Q.   All right. Thank you, sir.

9       A.   You're welcome.

10           MR. DAUCHOT: Your Honor, that's all I  
11   have on direct.

12           THE COURT: All right.

13           Cross-examination.

14           MR. CAWLEY: Thank you, Your Honor.

15           CROSS-EXAMINATION

16   BY MR. CAWLEY:

17       Q.   Good morning, Mr. Johnson.

18       A.   Good morning, Mr. Cawley.

19       Q.   You know, I hope this cross-examination won't  
20   be grueling. I guess I can't guarantee you that, but I  
21   can guarantee you it won't last 10 hours, if that's any  
22   reassurance.

23       A.   Thanks.

24       Q.   Now, let's -- let's start our -- our  
25   discussion at Einstein's Bagel Shop. You say you get

1 free Wi-Fi there, right?

2 A. Yes, I did.

3 Q. And I think you also told us that when you  
4 take your laptop or maybe you turn on your smartphone  
5 and you're connecting to that free Wi-Fi by your device,  
6 you don't even know whose chip is actually managing that  
7 Wi-Fi within the router, do you?

8 A. Correct.

9 Q. You don't really care. I mean, I guess you  
10 care, or you hope it's Intel's chip; but in terms of  
11 being able to get connected, you don't care, right?

12 A. Correct.

13 Q. And that's because these devices are  
14 interoperable. You're familiar with that word, aren't  
15 you?

16 A. Yes.

17 Q. And the interoperability that lets you connect  
18 your device to any Wi-Fi router in Einstein's Bagel or  
19 somewhere else is all due to the fact that those devices  
20 comply with a standard.

21 Do you agree with that?

22 A. Agree.

23 Q. In this case, the standard is some -- some  
24 flavor of 802.11, right?

25 A. Right.

1 Q. And Intel, in order to be interoperable, must  
2 make its products compliant with that standard, correct?

3 A. Yes.

4 Q. So wouldn't you agree that if someone has  
5 intellectual property, a patent, that is necessary to  
6 practice a standard, that someone who wants to make an  
7 interoperable product is going to need a license for  
8 that intellectual property?

9 A. They -- they need to have an agreement that  
10 they can use it for sure. I'm not -- I'm not on license  
11 expert, so I'm hesitating --

12 Q. Okay.

13 A. -- not to use the word license. But, yeah, we  
14 have to -- we have to, through the standard, agree that  
15 we can use each other's technology.

16 Q. And if there is a patent that is necessary to  
17 practice the standard, one way or another, whether -- I  
18 guess you're suggesting them not give it to you for  
19 free; but if they expect to be paid for the use of their  
20 patent, then someone who -- who wants to practice the  
21 standard is going to need to come to an agreement with  
22 them, correct?

23 A. I -- I don't -- that's not any experience. I  
24 don't totally agree with that.

25 Q. Well, you do agree that there may be patents

1 that are essential to standards, including 802.11,  
2 right?

3 A. Absolutely.

4 Q. Okay. And you do agree that it is essential  
5 for your business that you be able to make a product  
6 that is compliant with that standard?

7 A. I agree.

8 Q. All right, sir. Now, you pointed out to us, I  
9 think, an interesting history that back in 2002 -- I  
10 think was the first year you used -- what percentage of  
11 inclusion was there of 802.11?

12 A. Into notebooks?

13 Q. Yes, sir.

14 A. As I recall, less than 20 percent.

15 Q. So less than 20 percent.

16 So you would agree with me that 10, 11 years  
17 ago, Wi-Fi was something that people made choices about.  
18 Do I want to buy a laptop with Wi-Fi or do I not?

19 A. Yes.

20 Q. And then now, you -- you pointed out to us,  
21 Wi-Fi is so common and so readily available that people  
22 pretty well just assume that their notebook computer is  
23 going to have Wi-Fi in it.

24 A. Yes.

25 Q. You'd agree with that?

1 A. I agree.

2 Q. And you would agree that, in part, that's  
3 because of the popularity of Wi-Fi and because it's  
4 something that people want.

5 A. In part.

6 Q. Well, there's a lot of things, for example,  
7 that were common in computers in 2002 that have pretty  
8 well disappeared out of notebooks. Wouldn't you agree  
9 with that?

10 A. I'm not sure.

11 Q. Well, certain kind of drives; floppy disk  
12 drive -- do you have a floppy disk drive in your  
13 notebook computer?

14 A. I don't think I ever did, but no, I don't.

15 Q. All right. But those are gone, right?

16 A. They are as far as --

17 Q. Once upon a time, virtually every notebook  
18 computer came with that kind of drive, didn't they?

19 A. I -- I never had a floppy drive on my  
20 notebook.

21 Q. Okay. You know what a PC MCIA connection slot  
22 is, don't you?

23 A. Yes, I do.

24 Q. That was a technology that was certainly  
25 around and pretty popular in 2002.

1 A. Yeah, I agree.

2 Q. Don't see many of those anymore, do you?

3 A. No, I don't.

4 Q. But you do see 802.11, you've told us, not  
5 only in some laptops, but in virtually all of them.

6 A. Yes.

7 Q. You've told us also about the -- at least  
8 something about the pricing of your chip. This thing  
9 that we heard cost \$2.50 today, more or less, and is it  
10 fair to say it cost a lot more than that only a few  
11 years ago, fair?

12 A. It cost more than that a few years ago. I  
13 don't have the exact number, but, yeah, I agree with  
14 that.

15 Q. Okay. But what goes into the pricing of this  
16 chip? Are you -- are you -- are you now or have you  
17 been in some ways responsible for helping to price these  
18 chips?

19 A. During my tenure as the GM, I did.

20 Q. Okay. So what kind of factors did you have to  
21 consideration (sic) in arriving at the price Intel was  
22 going to charge for chips like this?

23 A. The -- the feature set, the performance, the  
24 cost of the product, things like that.

25 Q. Okay. Let's start with that last one.

1           A.     Okay.

2           Q.     The cost of the product.  What kind of things  
3 are included in the cost of a product like this?

4           A.     Well, the things you have to consider in  
5 pricing is how much it costs to develop it and then how  
6 much the chip costs and how much the components around  
7 it to make the chip costs and the software we developed  
8 on top of it, things like that.

9           Q.     How about the cost of any rights you have to  
10 have to be able to practice the technology?

11          A.     Yes.  If we had -- if we had had to license  
12 technology, it would be part of the cost of that.

13          Q.     So if this jury believes that Intel is using  
14 Ericsson's patents without permission and without paying  
15 anything for them, you haven't included that in the  
16 cost, have you?

17          A.     If -- if the Court finds that there's some  
18 royalties that we haven't accounted for, yeah, that  
19 needs to be included in the cost.

20          Q.     But right now it's not, is it?

21          A.     If there's -- if there's not a paid-for  
22 license for -- it's not included, correct.

23          Q.     And Intel today is able to offer this chip for  
24 \$2.50, in part, because it pays nothing for the right to  
25 use Ericsson's patents, correct?



1           A.    We -- we don't -- we don't pay for patents to  
2 Ericsson. I agree.

3           Q.    Okay. You told us about Intel, your company,  
4 and its locations. I was reading a little bit about  
5 Intel last night, and I -- I happened to notice that  
6 within the last fairly recent time, Intel spent  
7 \$2 billion to open a facility in India; is that right?

8           A.    I -- I'm not familiar with that facility.

9           Q.    You don't know if Intel has a facility in  
10 India in Bangalore?

11          A.    Oh, I know we have a facility in Bangalore.  
12 I'm just not aware of the 2-billion-dollar announcement.

13          Q.    It cost \$2 billion.  
14                How many people work there?

15          A.    I'm not sure.

16          Q.    Have you ever worked with any of them?

17          A.    A handful, yes.

18          Q.    Have you been there?

19          A.    No, I have not.

20          Q.    So you were able to work with -- I assume,  
21 were they engineers?

22          A.    Yes.

23          Q.    With engineers, with technical people in  
24 India, even though you didn't go there yourself  
25 personally?

1 A. Yes.

2 Q. Okay. Didn't have any problem with that?

3 A. It's never as good as face to face, but we  
4 made it work.

5 Q. Okay. You made it work.

6 And you'd agree with me, wouldn't you, that  
7 over the past decade or more, it's become pretty common  
8 for technology companies and others in the high-tech  
9 space to have a lot of interaction with technicians in  
10 India.

11 A. I -- I guess, yeah.

12 Q. Well, you don't -- you don't find it unusual  
13 that many high-tech companies have major facilities in  
14 India, do you?

15 A. No.

16 Q. You don't think there's anything unusual about  
17 hearing that a person involved in the high-tech field is  
18 dealing with people in India.

19 A. No, I don't.

20 Q. Okay. When did you first read the Ericsson  
21 patents in this case, Mr. Johnson?

22 A. End of last week.

23 Q. End of last week?

24 A. Yes, sir.

25 Q. You had never read them before then?

1 A. No, I haven't.

2 Q. I see.

3 Well, you're -- you're the Intel  
4 representative who's sitting here in the courtroom  
5 through the whole trial, right?

6 A. Yes, I am.

7 Q. When were you first asked to be the person  
8 that did that?

9 A. The -- the discussion started about a year ago  
10 as me potentially being that person.

11 Q. Okay. Now, let me ask you a few questions  
12 about Intel and the IEEE.

13 Have you ever attended any IEEE  
14 standard-setting meetings?

15 A. Personally, no.

16 Q. Okay. Well, I won't ask you about that.

17 You're aware, though, aren't you, that just  
18 like Ericsson did -- not just like, I shouldn't say  
19 that; but as Ericsson did, Intel has made some  
20 assurances to the IEEE about Intel's patents relating to  
21 802.11?

22 A. Yes, I'm generally aware.

23 Q. Okay. Well, let's get a little more specific  
24 about it.

25 MR. CAWLEY: Let's look at Plaintiffs'

1 Exhibit 507. Let's go ahead and enlarge, say, the first  
2 half of this document.

3 Q. (By Mr. Cawley) You see that this is a  
4 situation to the secretary of the IEEE?

5 A. Yes.

6 Q. And it comes from Intel?

7 A. Yes, sir.

8 Q. Okay. Now, if we look at the bottom part of  
9 the document --

10 MR. CAWLEY: If you'll -- if you'll  
11 enlarge -- there we go.

12 Q. (By Mr. Cawley) And you see from the four  
13 boxes there, four different choices, that this sets out  
14 what Intel's position is about its 802.11 patents to the  
15 IEEE?

16 A. Yes, I do.

17 Q. And you see the first choice was, under No. 1,  
18 that the patent holder -- that's Intel -- is prepared to  
19 grant a free license.

20 You see that?

21 A. Yes.

22 Q. But that's not checked, is it?

23 A. No, sir.

24 Q. And then there's some other choices, 3 and 4,  
25 either that Intel is not aware of any patents -- that's

1 No. 4 -- and No. 3, that it's unwilling to grant  
2 licenses.

3           You see that?

4       A.    Yes, sir.

5       Q.    That's not checked either.

6       A.    Correct.

7       Q.    What is checked is No. 2 that says that Intel  
8 is prepared to grant a license on a worldwide  
9 non-discriminatory basis among reasonable terms and  
10 conditions; accurate?

11      A.    Yes, sir.

12      Q.    So Intel itself has told the IEEE not that it  
13 will give away its 802.11 patents for free; but that it  
14 will be prepared to license them on a reasonable basis.

15           Do you agree with that?

16      A.    I agree.

17      Q.    Okay. And they also agreed to do it on a  
18 non-discriminatory. Do you understand what that means?

19      A.    Yes. And I learned a lot about it this week,  
20 too.

21      Q.    Okay. But in shorthand, it means no special  
22 deals.

23      A.    Yes, sir. And I learned a lot about that the  
24 last couple of days.

25      Q.    Okay. Why do you understand that's important?

1           A.    So if you -- I guess I'd just say, so if you  
2   develop for the standard, everyone can use that  
3   standard.

4           Q.    And they can all be on the same playing  
5   ground, right?

6           A.    I don't totally agree with that, because this  
7   isn't my area of expertise. I'd really defer to my  
8   technical team on the specifics of these terms.

9           Q.    Okay. Well, let me just ask you about your  
10   understanding and not the -- not the terms themselves.

11                    You understand that part of the basis for  
12   people making a commitment like this through a  
13   standard-setting body is that people who are considering  
14   adopting the technology will know, first of all, they  
15   can get a license, right?

16           A.    Sure. Yeah.

17           Q.    Not going to discover that they've been  
18   blocked somehow.

19                    Okay. So they can get a license, and that it  
20   will be on reasonable terms, right?

21           A.    Are you asking, based on my experience with  
22   licensing, or actually building products and IEEE?

23           Q.    I'm asking you your understanding of why these  
24   agreements like this are important.

25           A.    Okay. I'm -- I'm not -- I'm not technically

1 deep on these agreements, so --

2 Q. Okay.

3 A. -- we can keep going, but I just don't want  
4 set any expectation that --

5 Q. Do you have any understanding, just in  
6 general, about why people who are considering building a  
7 product compliant with the standard, find it important  
8 that they can get a license without being discriminated  
9 against?

10 A. Sure.

11 Q. What's your understanding?

12 A. So when we're building a product per the  
13 standard that we've all agreed to, we're not going to  
14 have a -- we're not going to have a lot of costs come  
15 in later and then have some people have to pay the cost  
16 and others not pay. That's just my --

17 Q. Right.

18 A. -- that's my experience --

19 Q. Sure.

20 A. -- building products.

21 Q. Okay. It's logical. Common sense, isn't it?

22 A. I don't know.

23 Q. People want to know that -- that they're not  
24 going to have to pay a higher rate than their  
25 competitors, for example.

1           You agree with that?

2           A.    I don't totally agree with that because I  
3 don't have experience here.

4           Q.    Okay.  Let me -- let me ask you a little bit  
5 more about 802.11 since you've built products compliant  
6 with that standard.

7                   Is 802.11 a wireless standard?  You'd agree  
8 with that, wouldn't you?

9           A.    Yes, sir.

10

11          Q.    But there are a lot of other wireless  
12 standards, too, aren't they?

13          A.    Yes.

14          Q.    GSM is a wireless standard?

15          A.    Yes.

16          Q.    3G?

17          A.    Sure.

18          Q.    4G?

19          A.    Sure.

20          Q.    TDMA and the CDMA?

21          A.    Sure.

22          Q.    All of those are wireless standards.

23                   Now, for GSM and 3G and 4G and TDMA and CDMA,  
24 those wireless standards, you can make phone calls using  
25 those standards, correct?



1 A. Sure.

2 Q. But you can use phone calls using 802.11, too,  
3 can't you?

4 A. Yes, you can.

5 Q. Do you think that ideas in one wireless  
6 standard could be useful in another wireless standard?

7 A. Yes.

8 Q. All right. Now, I know that -- that you've  
9 told us that you're not -- you weren't personally a  
10 participant in IEEE meetings, but I want to ask you this  
11 question, and you -- you tell me if you think it's  
12 fairly within your knowledge of this industry as a  
13 person who supervised these products and their  
14 development and to some extent, people's participation  
15 in standards.

16 When the IEEE develops a new standard, do they  
17 ever include any pre-existing technology in the new  
18 standard?

19 A. Yes.

20 Q. Okay. If that pre-existing technology is  
21 covered by a patent, then that patent would cover the  
22 new standard, wouldn't it?

23 A. I don't know.

24 Q. Well, it's kind of a matter of logic. If --  
25 if there's a piece of technology and it's covered by a

1 patent and it pre-exists the standard and the people  
2 setting up the new standard decide, yeah, we're going to  
3 put that in the new standard, too, you'd expect that  
4 that patent, for the pre-existing technology, would now  
5 cover the new standard into which that technology had  
6 been adopted, wouldn't you?

7 A. I'm sorry, I don't know.

8 Q. Okay. Does Intel sell 802.11 chips to  
9 Hewlett-Packard?

10 A. As far as -- when I was there, we did, and I  
11 have no reason to believe we don't -- still don't, yes.

12 Q. When you were selling the chips, did Intel  
13 indemnify Hewlett-Packard?

14 A. I can't remember what our agreement said back  
15 then, but generally, we entered into agreements where we  
16 would indemnify companies. And I entered into some of  
17 those agreements, but I can't speak for Hewlett-Packard.

18 Q. Okay. How about Dell? Does Intel indemnify  
19 Dell in this suit?

20 A. I can't speak to the specific agreements, but  
21 I have general experience that we do offer  
22 indemnification to our customers.

23 Q. How about Toshiba and Acer?

24 A. I don't know.

25 Q. Okay. Well, if there's -- if there's a

1 pleading in this case in which I could show you -- and  
2 I'll be glad to if you feel more comfortable if I did --  
3 but if there's a pleading in this case in which Intel  
4 asks to join this lawsuit because, among other reasons,  
5 it indemnified Toshiba and Acer, you wouldn't be  
6 surprised, would you?

7 A. If -- if we have agreements with our -- with  
8 our customers like that, we would stand behind those  
9 agreements.

10 Q. Okay. And what that indemnity means -- what  
11 does that indemnify mean when you say you have -- you  
12 give them indemnity?

13 A. In my experience, where -- if something  
14 happened in the agreement where they were sued, then  
15 if -- if there was a specific in the agreement, we'd  
16 stand behind that customer.

17 Q. What do you mean, stand behind them?

18 A. We'd -- we'd pay whatever the agreement said  
19 we'd pay.

20 Q. Okay. You'd -- you'd be responsible for  
21 paying for their infringement?

22 A. Well, there can be lots of terms around it,  
23 limitations. But generally speaking, we'd stand behind  
24 our -- we always stand behind our agreement.

25 Q. You'd come into court and defend them; is that

1 accurate?

2 A. I -- I don't -- I wouldn't totally agree with  
3 that.

4 Q. You don't agree with that?

5 A. No, I said I wouldn't totally agree with that.

6 Q. Okay. Would you partially agree with it?

7 A. I guess, yeah.

8 Q. Okay. Now, let me ask you finally about the  
9 relationship between patent holders and Intel and its  
10 customer.

11 Let's suppose that Intel could get a license  
12 from Ericsson for its patents in this lawsuit for a  
13 penny. You with me?

14 A. I'll try. I'm not sure.

15 Q. Okay.

16 A. I mean, I understand what you're saying, but I  
17 don't know where you're going.

18 Q. Well, that's because I haven't gone there yet.

19 A. Okay.

20 Q. But so far, I'm only this far.

21 A. Okay.

22 Q. I'm asking you to assume that Intel gets a  
23 license from Ericsson, either because Ericsson agrees or  
24 because the jury finds --

25 A. Okay.

1           Q.    -- that it's only worth a penny to Intel, and  
2 Intel gets a license now for one penny.  What's your  
3 understanding of how much Ericsson can collect, under  
4 those circumstances, from your customers, the other  
5 Defendants in this lawsuit?

6           A.    I don't know.

7           Q.    Okay.  You know, don't you, that you can only  
8 collect once for the patent?  If you collect from Intel,  
9 you can't collect any additional royalty from the  
10 customers.

11          A.    I've heard that in testimony this week, but I  
12 don't know that.

13          Q.    Okay.  Well, you're not a lawyer, and I'm not  
14 asking you to give a legal opinion.

15                But what you understand, and we certainly  
16 haven't heard anybody suggest to the contrary, is, if  
17 Intel can convince the jury to give a one-penny royalty  
18 to Intel, then Ericsson gets one penny from Intel and  
19 zero from the customers.  You've heard that, haven't  
20 you?

21          A.    I've heard that, yes.

22          Q.    Okay.  And Intel is not the only chip maker  
23 that these companies buy 802.11 chips from, are they?

24          A.    No, sir.

25          Q.    Intel competes with other companies.  You've

1 named some of them: Atheros and Broadcom, right?

2 A. Yes.

3 Q. And you know that Intel is in some pretty  
4 fierce competition with them, right?

5 A. Yeah, we compete vigorously.

6 Q. Okay. So if what you've heard in the  
7 courtroom is true, if Intel can get a license for a  
8 penny, couldn't it go to its prospective customers and  
9 say, hey, if you buy Broadcom or Atheros, you may have  
10 to pay Ericsson 50 cents? But if you buy from us, you  
11 don't have to pay anything. That could happen, couldn't  
12 it?

13 A. I don't know.

14 Q. Okay.

15 MR. CAWLEY: I'll pass the witness, Your  
16 Honor.

17 THE COURT: All right. Redirect?

18 MR. DAUCHOT: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. DAUCHOT:

21 Q. The -- so was this as bad as your interview?

22 A. I don't know. I don't feel like I did so  
23 good.

24 Q. All right. Let's -- I want to focus on just  
25 one part of the cross-examination, and, that is the

1 50-cent issue. And there was some discussion back and  
2 forth about, you know, what would happen if -- if Intel  
3 had to pay 50 cents today on the Ericsson patents, et  
4 cetera.

5 And -- and you testified something about  
6 the -- on the question of discrimination, something  
7 about, you know, folks working on the 802.11 standard  
8 having an issue with costs coming in later. Do you  
9 remember that testimony?

10 A. I think so.

11 Q. All right. So -- so let's focus -- we're  
12 during the standard setting process, right? You folks  
13 are sitting here trying to figure out what technology  
14 we're going to put in, what technology are we not going  
15 to put in, right?

16 A. Right.

17 Q. And during your experience back in the 2000  
18 time frame, you remember from time-to-time issues coming  
19 up about, hey, are we going to go this route or this  
20 route?

21 A. Yes, I remember that.

22 Q. And costs, I would assume, came into the  
23 equation, as well?

24 A. It never happened. But if -- if -- if one of  
25 our competitors had brought in a proposal that was going

1 to put a cost on our product of 50 cents, it would have  
2 been escalated to me.

3 Q. Okay. It would have been escalated to you.  
4 Why does it get escalated to you?

5 A. Because I end up owning the business statement  
6 and the commitments we've made.

7 Q. All right. And how do you react to 50 cents,  
8 given what you all were trying to accomplish in terms of  
9 low-cost interoperability?

10 A. Inconsistent with what we were trying to  
11 achieve.

12 Q. And how so? Why does the 50 cents create a  
13 problem?

14 A. Well, if you look at where we're at today,  
15 which was, you know, what we strive to and what we  
16 have -- kind of what we had achieved on the Ethernet  
17 standards, 50 cents on 2.50 ends up being a big problem.

18 Q. And so the proposition was that it would just  
19 be a -- quite a simple matter, just tack the 50 cents on  
20 to the 2.50, and, hey, pass it on to the OEMs. Did you  
21 get that -- did you hear that suggestion?

22 A. I don't remember hearing that, but it -- it  
23 would have been a problem as we were trying to develop  
24 products for the standard.

25 Q. All right. And why so?



1           A.     Because we were trying to -- we were trying to  
2     drive the cost down so every laptop and device could  
3     include Wi-Fi and then use it anywhere. And driving  
4     prices up is exactly in the face of what we were trying  
5     to achieve.

6           Q.     All right. Now, one final question. There  
7     was a question as to whether or not the chip price of  
8     Intel includes a cost in there for Ericsson's licenses.

9                     Do you remember that question?

10          A.     Yes, sir.

11          Q.     And I think you testified no. Correct?

12          A.     Yes, I did.

13          Q.     And why not?

14          A.     Because we don't use it.

15          Q.     All right. Thank you, sir.

16                     MR. DAUCHOT: That's all I have.

17                     THE COURT: Any recross?

18                     MR. CAWLEY: No, Your Honor.

19                     THE COURT: All right. Thank you.

20                     All right. If the Members of the Jury  
21     will pass down your witness questions.

22                     (Pause in proceedings.)

23                     MR. DAUCHOT: Your Honor, just for the  
24     record, may this witness be excused?

25                     THE COURT: Not yet.

1 MR. DAUCHOT: Oh, I'm sorry.

2 (Pause in proceedings.)

3 THE COURT: All right. Ladies and  
4 Gentleman of the Jury, we're going to go ahead and take  
5 our lunch break at this time, and we'll be in recess  
6 until 12:30.

7 Please follow the Court's instructions  
8 and don't discuss the case among yourselves, and enjoy  
9 your lunch. We'll see you back here at 12:30.

10 COURT SECURITY OFFICER: All rise.

11 (Jury out.)

12 THE COURT: Please be seated.

13 All right. We have a question from the  
14 jury that says: Can we see copies of patents that Intel  
15 uses for their chips? Patent numbers or licenses from  
16 other inventors' patents.

17 MR. CAWLEY: If that's -- that's outside  
18 the evidence, Your Honor. I guess it's outside the  
19 evidence. I'm not aware that there is such evidence in  
20 the case at this point. I think that it would be  
21 improper to go into that with this witness.

22 THE COURT: Okay. All right.

23 MR. DAUCHOT: Your Honor, we agree, at  
24 least at this juncture.

25 THE COURT: All right. The Court will

1 not ask that question. I think it -- it really  
2 violates -- they're supposed to ask questions relating  
3 to this witness's testimony, and this is just more of a  
4 general -- general request. But that will -- anything  
5 further before we adjourn for lunch?

6 MR. CAWLEY: Nothing from Plaintiff.

7 THE COURT: All right. We'll --

8 Excuse me?

9 MR. DAUCHOT: I'm sorry, Your Honor. Is  
10 that the only question of the witness?

11 THE COURT: Yes, he may be excused.

12 MR. DAUCHOT: May he now be excused?

13 THE COURT: Yes.

14 MR. DAUCHOT: Thank you.

15 THE COURT: All right. Be in recess.

16 (Lunch recess.)

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1 CERTIFICATION

2

3 I HEREBY CERTIFY that the foregoing is a  
4 true and correct transcript from the stenographic notes  
5 of the proceedings in the above-entitled matter to the  
6 best of our abilities.

7

8

9 /s/ Shea Sloan  
SHEA SLOAN, CSR  
10 Official Court Reporter  
State of Texas No.: 3081  
11 Expiration Date: 12/31/14

12

13

/s/ Judith Werlinger  
14 JUDITH WERLINGER, CSR  
Deputy Official Court Reporter  
15 State of Texas No.: 731  
Expiration Date 12/31/14

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